

**Consideration of preliminary adoption of amendments to surface water emergency standards to relocate rules from 312 IAC 11-6 to 312 IAC 11.5; Administrative Cause No. 09-176W**

Recommended for preliminary adoption, as set forth below, are amendments to relocate surface water emergency standards from 312 IAC 11-6 to 312 IAC 11.5. The amendments are housekeeping measures intended primarily to provide better clarity and visibility for a narrow but important regulatory program. The program affords protection for “lake owners”, along public lakes and private lakes, from the activities of significant water withdrawal facilities. Currently, 312 IAC 11-6 is the only rule within 312 IAC 11 which is *not* derived from IC 14-26-2 (sometimes referred to as the “Lakes Preservation Act”). A consequence has been occasional confusion, most frequently to persons whose interest is in implementation of the Lakes Preservation Act and its rules. In addition, the location of 312 IAC 11-6 (which follows numerous sections in 312 IAC 11) makes its significance obscure to potentially interested persons. Although the configuration of proposed 312 IAC 11.5 differs somewhat from current 312 IAC 11-6, and proposed 312 IAC 11.5-1-2(2) includes a cross-reference to an enforcement option which is not currently specified, the substance of the proposed rule is not believed to substantively differ from the existing rule.

**TITLE 312 NATURAL RESOURCES COMMISSION**

**Proposed Rule**  
LSA Document #09-  
DIGEST

Adds 312 IAC 11.5 to govern the emergency regulation of surface water rights on freshwater lakes that contain at least ten (10) acres. Repeals 312 IAC 11-6 which currently governs this subject. Provides that the director of the division of water may file with the natural resources commission a complaint for a notice of violation under IC 14-10-2-6. Makes technical corrections. Effective January 1, 2011.

**SECTION 1. 312 IAC 11.5 IS ADDED TO READ AS FOLLOWS:**

**312 IAC 11.5 SURFACE WATER EMERGENCIES ON LAKES**

**Rule 1. Administration and enforcement**

**312 IAC 11.5-1-1 Administration**

Authority: IC 14-10-2-4

Affected: IC 14-25-5-15

**Sec. 1. The division shall administer and coordinate the professional and technical functions required of the department under IC 14-25-5 and this rule.**  
*(Natural Resources Commission, 312 IAC 11.5-1-1)*

**312 IAC 11.5-1-2 Enforcement**

Authority: IC 14-10-2-4

Affected: IC 14-10-2-6; IC 14-25-5-15

**Sec. 2. To enforce IC 14-25-5 or this article on behalf of the commission:**  
**(1) The director may initiate an action under IC 14-25-5-15(b) to enjoin a violation.**  
**(2) The division director may, under IC 4-21.5-3-8, file with the commission a complaint for a notice of violation under IC 14-10-2-6.** *(Natural Resources Commission, 312 IAC 11.5-1-2)*

**Rule 2. Definitions**

**312 IAC 11.5-2-1 Applicability of definitions**

Authority: IC 14-10-2-4

Affected: IC 14-8; IC 14-25-5

**Sec. 1. The definitions in sections 2 through 9 of this rule apply throughout this article and are in addition to those set forth in IC 14-8 and 312 IAC 1.** *(Natural Resources Commission; 312 IAC 11.5-2-1)*

**312 IAC 11.5-2-2 “Cumulative effect” defined**

Authority: IC 14-10-2-4

Affected: IC 14-25-5

**Sec. 2. “Cumulative effect” means the impact of multiple significant water withdrawal facilities.** *(Natural Resources Commission; 312 IAC 11.5-2-2)*

**312 IAC 11.5-2-3 “Division” defined**

Authority: IC 14-10-2-4

Affected: IC 14-8; IC 14-25-5

**Sec. 3. “Division” means the division of water of the department.** *(Natural Resources Commission; 312 IAC 11.5-2-3)*

**312 IAC 11.5-2-4 “Extraordinary or unique natural resource” defined**

Authority: IC 14-10-2-4

Affected: IC 14-25-5; IC 14-29-6; IC 14-31-1

**Sec. 4. “Extraordinary or unique natural resource” means a natural resource that is exceptional to a very marked extent within Indiana and includes the following:**

- (1) A plant or animal that is a rare, threatened, or endangered species.**
- (2) A waterway located within one-half (½) mile of a freshwater lake and determined by the department to qualify as a natural river or a scenic river under IC 14-29-6 and 312 IAC 7-2.**
- (3) A nature preserve dedicated under IC 14-31-1.** *(Natural Resources Commission; 312 IAC 11.5-2-4)*

**312 IAC 11.5-2-5 “Financial responsibility bond” defined**

Authority: IC 14-10-2-4

Affected: IC 14-25-5

**Sec. 5. “Financial responsibility bond” means any of the following:**

- (1) Surety bond.**
- (2) Certificate of deposit.**
- (3) Cashier’s check**
- (4) Letter of credit.**

*(Natural Resources Commission; 312 IAC 11.5-2-5)*

**312 IAC 11.5-2-6 “Freshwater lake” defined**

Authority: IC 14-10-2-4

Affected: IC 14-25-5

**Sec. 5. (a) “Freshwater lake” means a body of standing surface water that contains at least ten (10) acres at the body of water’s normal level and:**

(1) is of natural origin; or  
(2) was originally constructed to permanently retain water and was in existence at least five (5) years before the commencement of water withdrawals by a significant water withdrawal facility.

(b) The term does not include Lake Michigan. (*Natural Resources Commission; 312 IAC 11.5-2-6*)

**312 IAC 11.5-2-7 "Lake owner" defined**

Authority: IC 14-10-2-4

Affected: IC 14-25-5

**Sec. 7. "Lake owner" means a person in possession of property that includes a physical part of, or a legal interest in, a freshwater lake.** (*Natural Resources Commission; 312 IAC 11.5-2-7*)

**312 IAC 11.5-2-8 "Significant environmental harm" defined**

Authority: IC 14-10-2-4

Affected: IC 14-25-5

**Sec. 8. "Significant environmental harm" means damage to natural or cultural resources, the individual or cumulative effect of which is found by the director to be obvious and measurable (based upon the opinion of a professional qualified to assess the damage) and that:**

(1) creates a condition where recovery of affected resources is not likely to occur within an acceptable period; and

(2) cannot be adequately mitigated through the implementation of a mitigation plan approved by the director. (*Natural Resources Commission; 312 IAC 11.5-2-8*)

**312 IAC 11.5-2-9 "Significant water withdrawal facility" defined**

Authority: IC 14-10-2-4

Affected: IC 14-25-5

**Sec. 9. "Significant water withdrawal facility" means a water pumping installation or other equipment of a person that, in the aggregate from all sources and by all methods, has the capability of withdrawing at least one hundred thousand (100,000) gallons of water in one (1) day.** (*Natural Resources Commission; 312 IAC 11.5-2-9*)

SECTION 2. 312 IAC 11-6 IS REPEALED.